

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4537 of 1990

For Approval and Signature:

Hon'ble MR.JUSTICE A.N.DIVECHA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? Yes

2. To be referred to the Reporter or not? Yes

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3. Whether Their Lordships wish to see the fair copy of the judgement? No

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No

5. Whether it is to be circulated to the Civil Judge?

No

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RAVJIBHAI KASHIBHAI PATEL

Versus

URBAN LAND TRIBUNAL AND ANR.

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Appearance:

Kum. V.P. Shah, advocate, for the Petitioner

Shri T.H. Sompura, Asst. Govt. Pleader, for the Respondents

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CORAM : MR.JUSTICE A.N.DIVECHA

Date of decision: 26/06/96

ORAL JUDGEMENT

The order passed by the Competent Authority at Vadodara (respondent No. 2 herein) on 6th October 1988 as affirmed in appeal by the order passed by the Urban Land Tribunal at Ahmedabad (respondent No. 1 herein) on 9th April 1990 in Appeal No. Vadodara-276 of 1988 is

under challenge in this petition under art. 226 of the Constitution of India. By his impugned order, respondent No. 1 rejected the petitioner's application for permission under sec. 21(1) of the Urban Land (Ceiling and Regulation) Act, 1976 (the Act for brief) on the ground that it was not filed within the prescribed time-limit.

2. The facts giving rise to this petition move in a narrow compass. The dispute centres round 3 parcels of land bearing survey Nos.421, 422 and 423 admeasuring 710 square meters, 6987 square meters and 13057 square meters respectively situated at village Vadsar within the urban agglomeration of Vadodara (the disputed lands for convenience). They enjoyed exemption under sec. 20(1) of the Act by the order passed by and on behalf of the State Government on 5th February 1980. By an order passed on 6th January 1988, such exemption with respect to the disputed lands came to be withdrawn. Its copy is at Annexure A to this petition. Thereafter the petitioner applied for permission in the prescribed form under sec. 21(1) of the Act on 11th March 1988 qua the disputed lands. By the order passed on 6th October 1988, respondent No. 2 rejected it on the ground that it was not filed within the prescribed period of limitation. Its copy is at Annexure B to this petition. The aggrieved petitioner carried the matter in appeal before respondent No. 1 under sec. 33 of the Act. It came to be registered as Appeal No. Vadodara-276 of 1988. By the order passed on 9th April 1990 in the aforesaid appeal, respondent No. 2 dismissed it. Its copy is at Annexure C to this petition. The aggrieved petitioner has thereupon approached this Court by means of this petition under art. 226 of the Constitution of India for questioning the correctness of the order at Annexure B to this petition as affirmed in appeal by the appellate order at Annexure C to this petition.

3. Learned Advocate Kum. Shah for the petitioner has submitted that the authorities below have not applied their mind to proviso (b) to rule 11 of the Urban Land (Ceiling and Regulation) Rules, 1976 (the Rules for convenience) framed under sec. 46 of the Act. She has submitted that the limitation of 1139 days would start in the instant case from the date of the order at Annexure A to this petition in view of the aforesaid statutory provision. Learned Assistant Government Pleader Shri Sompura for the respondents has tried to support the impugned orders by submitting that the authorities below have correctly interpreted rule 11 of the Rules and have rightly rejected the petitioner's application under sec.

21(1) of the Act on the ground that it was filed beyond the prescribed period of limitation.

4. In order to appreciate rival submissions urged before me, it would be quite proper to look at the relevant provisions contained in rule 11 of the Rules. It reads:

11. The time within which, and form in which, declaration under sub-section (1) of Sec. 21 shall be made.- Every declaration under sub-section (1) of Sec. 21 by a person holding vacant land shall be made within one thousand, one hundred and thirty-nine days from the commencement of the Act and shall be in Form V :

Provided that-

xxx xxx xxx

(b) where any vacant land held by any person and exempted by Cl. (iv) of sub-section (1) of Sec. 19 or sub-section (1) of Sec. 20 ceases to be so exempted and as a consequence thereof the extent of such land, together with the extent of the vacant land, if any, already held by him, exceeds in the aggregate the ceiling limit, then the time within which such person may file the declaration referred to under sub-section (1) of Sec. 21 shall be one thousand one hundred and thirty-nine days from the date on which such vacant land ceases to be so exempted.

It becomes clear from a bare perusal of the aforesaid relevant statutory rule that ordinarily the application under sec. 21(1) of the Act has to be made within 1139 days from the commencement of the Act. Proviso (b) thereto however carves out an exception in favour of a parcel of land enjoying exemption inter alia under sec. 20(1) of the Act. In that case, the limitation of 1139 days would start from the date of revocation or withdrawal of such exemption. The aforesaid statutory provision contained in proviso (b) to rule 11 of the Rules is quite clear in its meaning. There could not be any other interpretation in that regard.

5. In the instant case, the disputed lands enjoyed exemption under sec. 20(1) of the Act. Such exemption came to be revoked or withdrawn by the order passed on 6th January 1988 at Annexure A to this petition. In view of proviso (b) to rule 11 of the Rules, the period of limitation would start from that date, that is, 6th January 1988. It becomes clear from the material on

record that the petitioner applied for permission under sec. 21(1) of the Act in the prescribed form on 11th March 1988, within about 70 days from the date of the order at Annexure A to this petition. It was very much within the prescribed period of limitation in view of the aforesaid statutory provision.

6. It appears that the authorities below have not applied their mind to the aforesaid statutory provision and have therefore fallen into error in rejecting the petitioner's application under sec. 21(1) of the Act on the ground that it was filed beyond the prescribed period of limitation. The impugned order at Annexure B to this petition as affirmed in appeal by the appellate order at Annexure C to this petition can thus be said to be suffering from the vice of non-application of mind on the part of the respondents. It cannot be sustained in law.

7. In the result, this petition is accepted. The order passed by the Competent Authority at Vadodara (respondent No. 2 herein) on 6th October 1988 at Annexure B to this petition as affirmed in appeal by the order passed by the Urban Land Tribunal at Ahmedabad on 9th April 1990 in Appeal No. Vadodara-276 of 1988 at Annexure C to this petition is quashed and set aside. The matter is remanded to respondent No. 2 for restoration of the proceeding to file and for his fresh decision according to law in the light of this judgment of mine. Rule is accordingly made absolute to the aforesaid extent with no order as to costs.

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